# REMARKS

[0010]  Applicant respectfully requests reconsideration and allowance of all of the claims of the application. The status of the claims is as follows:

- Claims 1-25 and 36 are currently pending

- Claims 3, 5, 13, 19, and 23 are canceled herein

- Claims 26-35 are withdrawn herein

- Claims 1, 7, 11, 21, 22, 24, 25, and 36 are amended herein

[0011]  Several amendments to the claims are based on subject matter originally recited in dependent claims. For example, claim 1 is amended to include subject matter from dependent claims 3 and 5; claim 11 is amended to include subject matter from dependent claims 13 and 19; and claim 21 is amended to include subject matter from dependent claim 23. Further support for the amendments to the claims is found in the specification as originally filed. Thus no new matter is introduced by the amendments.


## Obviousness-Type Double Patenting Rejections

[0012]  Claims 1-4, 11-13, 17, 21, 25 and 36 stand rejected under the judicially created doctrine of obviousness-type double patenting as being obvious over claims 1-18 of U.S. Patent No. 6,637,031.

[0013]  Without commenting on the basis for the obviousness-type double patenting rejection, Applicant respectfully requests that this rejection be held in abeyance until at least one claim is found to be allowable.

## Claims 11 and 14-25 Recite Statutory Subject Matter Under § 101

[0014]   Claims 11 and 14-25 stand rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Applicant respectfully traverses this rejection.

[0015]   Nevertheless, for the sole purpose of expediting prosecution and without commenting on the propriety of the Office's rejections, Applicant herein amends the claims as shown above. Applicant respectfully submits that these amendments render the § 101 rejection moot.

## Cited Documents

[0016]   The following documents have been applied to reject one or more claims of the Application:

- Chou: Chou, U.S. Patent No. 6,637,031

- Lee: Lee, U.S. Patent No. 7,028,096

- Pinckney:   Pinckney, III, et al., U.S. Patent Application Publication No. 2002/0161911

## Rejections

[0017]   Claims 1-3, 7, 11-13, 17, 21, 25 and 36 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Chou.

[0018]   Claims 1-4, 11-13, 21, 25 and 36 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Lee.

[0019]    Claims 5-10, 14-20 and 22-24 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Lee in view of Pinckney.

[0020]    Applicant respectfully traverses each of these rejections.  Furthermore, claims 3, 5, 13, 19, and 23 are canceled without prejudice or disclaimer.


## *Independent Claim 1*

[0021]    In light of the amendments presented herein, Applicant respectfully asserts that the rejection of independent claim 1 is moot.

[0022]    Specifically, none of Chou nor Lee nor Pinckney, alone or in combination disclose teach or suggest at least the following portions of claim 1 (as amended):

> "receiving, at a client device for presentation to a user, a plurality of temporally non-contiguous portions of a streaming media file, wherein:
>> temporally non-contiguous portions consist of portions of a received streaming media file that are not adjacent to one another in terms of the temporal presentation of their content during playback, and
>> at least a first and a second of the temporally non-contiguous portions of the received streaming media file being encoded at different bit rates, wherein the first and second non-contiguous portions comprise video data and wherein a third non-contiguous portion comprises audio data"

[0023]    In contrast, Chou describes "two different data streams," (c. 3, ll. 29-30).  Chou describes "[a]udio [and] video … data types … stored on [a] video server … and delivered by an application on-demand over [a] network … to one or more video clients," (c. 6, ll. 60-64).  And, Chou goes on to describe, "[i]n operation, … a user clicks on a link to a video clip … , and an application program for viewing streamed multimedia files launches from a hard disk of the video client … .  The application begins loading in a file for the video which is being transmitted across the network … from the video

server," (c. 7, ll. 9-15). Chou does not describe at least two "temporally non-contiguous portions of the received streaming media file ... consist[ing] of portions of a received streaming media file that are not adjacent to one another in terms of the temporal presentation of their content during playback" as recited in the claim. Chou does not describe a "first and second non-contiguous portions comprise video data and wherein a third non-contiguous portion comprises audio data" as recited in the claim.

[0024]    Additionally, Lee lacks the emphasized feature recited in claim 1, above as amended. Lee describes selective caching designed to reduce bandwidth requirements between a central server and a proxy server (c. 3-4, ll. 60-57). While Fig. 3A illustrates "stretching the delivery schedule ... over unused time slots," (c. 11, ll. 50-65). It also appears as though the caching described in Lee occurs at the proxy server (c. 3-4, ll. 67-6). Lee describes a "media delivery system" generally applicable to "video streaming signals [and] audio streaming signals," (c. 5, ll. 44-49).

[0025]    Furthermore, as the Office has admitted, Chou does not disclose at least the following portions of claim 1 (as amended):

> "wherein the act of storing comprises:
>      creating a plurality of media cache streams, each media cache stream being associated with a unique bit rate;
>      storing the first non-contiguous portion in a media cache stream associated with the bit rate of the first non-contiguous portion;
>      storing the second non-contiguous portion in a media cache stream associated with the bit rate of the second non-contiguous portion; and
>      storing the media cache streams in the cache file"

[0026]    The Office relied on a combination of Lee and Pinckney in the rejection of the immediately preceding recitation. However, Applicant respectfully asserts that Lee lacks the elements discussed in paragraph [0022], above, and Pinckney describes a

"Streaming Delivery Accelerator (SDA) … intermediate between the content provider … and one or more clients, (Pinckney [0031]). Furthermore, Pinckney explicitly describes, "the SDA receives a source content file 910 from a content provider and 'shreds' the source content file 910 into … contiguous files 920, 930, 940 [that] represent contiguous subsets of the content file 910," (Pinckney [0055]-[0058]). Thus, 920, 930, and 940 of Pinckney are contiguous and Pinckney lacks at least the non-contiguous portions as recited in the claim as amended.

[0027]    Consequently, none of Chou nor Lee nor Pinckney, alone or in combination disclose teach or suggest all of the elements and features of this claim. Accordingly, Applicant submits that neither Chou nor Lee anticipate this claim, and respectfully requests that the rejection of this claim be withdrawn. Furthermore, Applicant submits that the claim is non-obvious over Lee in view of Pinckney, and respectfully requests that this claim be allowed over the cited documents.


## _Independent Claims 7, 11, 21, and 36_

[0028]    Each of independent claims 7, 11, 21, and 36 recite at least one feature or element similar to those discussed above with respect to claim 1. Thus, Applicant respectfully asserts that independent claims 7, 11, 21, and 36 are allowable over the cited documents for at least similar reasons as claim 1.

## *Dependent Claims 2-6, 8-10, 12-20, and 22-25*

[0029]    Claims 2-6, 8-10, 12-20, and 22-25 ultimately depend from one of independent claims 1, 7, 11, or 21.  As discussed above, claims 1, 7, 11, or 21 are allowable over the cited documents.  Therefore, claims 2-6, 8-10, 12-20, and 22-25 are also allowable over the cited documents of record for at least their dependency from an allowable base claim.  These claims may also be allowable for the additional features that each recites.


## Conclusion

[0030]    Applicant submits that all pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application. If any issues remain that prevent issuance of this application, the Examiner is urged to contact the undersigned representative for the Applicant before issuing a subsequent Action.


Respectfully Submitted,

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